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S.B. CIVIL WRIT PETITION NO.1790/1995
(Ganganagar Central Co-operative Bank Vs. Judge Labour Court)

Date:- 27.07.2007

HON'BLE MR. RAJESH BALIA,J.

Mr. M.S.Singhvi, for the petitioner.
Mr. Sachin Acharya, for the respondent.

Heard learned counsel for the parties.

The petitioner challenges the award passed by labour court dated 6.10.1994 by which the retrenchment of the petitioner was found to be invalid and he was ordered to pay full backwages. The facts emerging in the case are that the petitioner was appointed as a Driver on 15.5.89 and according to the claim set up by the workman, his services were brought to an end on 28.9.90. The period of his service has been extended from time to time.

At time alleged retrenchment took place the workman was being paid Rs. 30/- per day. A reference was made by the Govt. to the labour court, and to adjudicate upon the validity of the termination. The termination of services was found to be illegal inter alia on the ground that regular extention from time to time for indefinite number was a camouflage to cloak the indefinite employment in the

work, which permanently existed with the colour of fixed term employment, hence the case was found not to fall within Section 2(oo)(bb) of the ID Act, 1947. The petitioner having more than one year's continuous service to his credit at the time of his termination. Admittedly there was no compliance of the provisions of Section 25F of the Industrial Disputes Act, 1947 either, in the matter of giving a notice or remuneration in lieu of one month's notice before the date of termination nor at the time of retrenchment compensation also under Section 25F (b) were fulfilled. As noticed above the plea of employer that the termination order came to an end automatically by efflux of time and the matter is covered by Section 2 (oo) (bb) of the Act of 1947 was rejected. Without going to the technicality of the procedure the fact remains that the respondent-workman was employed on daily wages at Rs. 30 per day at the time termination of his service took place and has less than 1½ years service to his credit.

In these circumstances, reinstatement was not the appropriate remedy which has yet not been affected. At this distance of time reinstatement of the workman would not be otherwise conducive to the industrial peace in any sense of the term. The respondent workman has already secured the last drawn wages since filing the application under

Section 17B of the ID Act,1947 before this Court and ends of justice would be met if the award is modified by awarding a lump sum amount as compensation for illegal retrenchment. Looking to the totality of the circumstances of the case, Rs.25,000/- will be just compensation for the respondent. Accordingly, the writ petition is allowed, the award of labour court is modified by substituting the award of reinstatement with full back wages with the award of compensation of 25,000/- excluding the amount already paid under operation of Section 17B.

There shall be no costs.

(RAJESH BALIA),J

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